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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SUSAN K. TOOR,

Plaintiff,

v.

FARHAD KHAN, et al.,

Defendants

No. C-09-2850 MMC

**ORDER DIRECTING PLAINTIFF TO FILE
CERTIFICATE OF SERVICE AS TO
DECEMBER 23, 2009 RESPONSE AND
SECOND AMENDED COMPLAINT;
NOTICE TO PLAINTIFF**

/

The Court is in receipt of plaintiff's "Written Response Re: Order to Show Cause For Failure to Prosecute," filed December 23, 2009 ("Response"), which was filed in response to the Court's December 8, 2009 order directing plaintiff to show cause why her claims against defendants Farhad Khan ("Khan") and Vanda Karamehmedovic ("Karamehmedovic") should not be dismissed for failure to prosecute.

Under the Local Rules of this District, any document filed with the Clerk of the Court must have attached thereto a certificate of service on the other parties to the action, see Civil L.R. 5-6(a), which certificate must state "the date, place and manner of service and the names, street address or electronic address of the person served, certified by the person who made service, pursuant to 28 U.S.C. § 1746," see id. Where a document is electronically filed, however, a certificate of service on registered ECF users is not required. See Civil L.R. 5-6, Commentary.

1 Here, plaintiff electronically filed the Response and did not attach thereto a
2 certificate of service. Because defendant OneWest Bank, F.S.B. ("OneWest"), is
3 represented by counsel who is an ECF user, plaintiff was not required to attach thereto a
4 certificate of service on OneWest. See id. Because neither Khan nor Karamehmedovic is
5 an ECF user, however, plaintiff was required to attach to the Response a certificate of
6 service on Khan and Karamehmedovic.¹

7 Accordingly, plaintiff is hereby DIRECTED to file, no later than January 8, 2010, a
8 certificate of service indicating she has served the Response on Khan and on
9 Karamehmedovic, and setting forth therein the information required by Civil Local Rule 5-
10 6(a). If plaintiff fails to timely file such certificate of service, the Court will strike the
11 Response.

12 Further, as is explained therein, the Court's December 8, 2009 order directing
13 plaintiff to show cause was issued because the docket did not reflect plaintiff had served
14 the Second Amended Complaint ("SAC") on Khan and Karamehmedovic. In the Response,
15 plaintiff asserts that she mailed a copy of the SAC to Khan and to Karamehmedovic, that
16 she had an unspecified "misunderstanding regarding the operation of the PACER system,"
17 and that she "submitted to PACER" a "Proof of Service" on December 23, 2009. (See Pl.'s
18 Response, filed December 23, 2009, at 2:6-9.) The docket does not reflect, however, that
19 plaintiff filed, on December 23, 2009 or on any other date, a certificate of service setting
20 forth the information required by Civil Local Rule 5-6(a) regarding any service of the SAC
21 on Khan and on Karamehmedovic.²

22 //

23 ¹Both Khan and Karamehmedovic are proceeding pro se.

24
25 ²Plaintiff has attached to her Response a copy of documents prepared by the United
26 States Postal Service ("USPS"), on which plaintiff appears to rely for proof that she served
27 the SAC on Khan and on Karamehmedovic. Such copies, however, do not constitute
28 certificates of service for purposes of Civil Local Rule 5-6(a)(2). In particular, the copies fail
to include the names and addresses of the persons to whom the USPS delivered the
referenced mailings. Further, the copies do not include a certification under penalty of
perjury by the person who delivered any such mail to the USPS. See Civil L.R. 5-6(a)(2).

1 Accordingly, plaintiff is hereby DIRECTED to file, no later than January 8, 2010, a
2 certificate of service indicating she has served the SAC on Khan and on Karamehmedovic,
3 and setting forth therein the information required by Civil Local Rule 5-6(a). If, as to any
4 such defendant, plaintiff fails to timely file such proof of service, the Court will dismiss the
5 SAC as against said defendant(s) for failure to prosecute.

6 **IT IS SO ORDERED.**

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8 Dated: December 29, 2009

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MAXINE M. CHESNEY
United States District Judge

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